

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 390 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ASHWINKUMAR GORDHANBHAI & BROSPVT LTD.

Appearance:

MR BB NAIK WITH MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE C.K.BUCH

Date of decision: 19/01/2000

ORAL JUDGEMENT(J.N.Bhatt, J.)

At the instance of the Revenue, the following question

has been referred to us for our opinion, by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" :

"Whether, on the facts and in the circumstances of the case and in law the Tribunal was right in law in coming to the conclusion that the assessee Company was an Industrial Company hence not liable for tax u/s.104 of the I.T.Act ?"

The factual circumstances, which have, given rise to the reference under consideration, may be stated first. The relevant assessment year is 1979-80, in which the assessee, which is a company claimed to be an Industrial Company and, thus, not liable for the additional tax leviable under section 104 of the Income-tax Act. This claim was rejected by the ITO holding that the assessee is not an Industrial Company, as a result of which, he recorded an order under section 104 of the IT Act.

Upon an appeal before the CIT (Appeals), following his order of the preceding year in the case of the same assessee reversed the view of the ITO and held that the assessee is an Industrial Company and, therefore, not liable for additional tax leviable under section 104 of the I.T.Act, as a result of which, the Revenue preferred appeal before the Tribunal and the Tribunal following its own decision, confirmed the order of the first appellate authority and dismissed the appeal of the Revenue. That is how the aforesaid question has been referred to us for our opinion.

During the course of the hearing, learned counsel for the Revenue drew our attention to an identical decision in the case of Commissioner of Income Tax vs. Ashwinkumar Gordhanbhai & Bros., 212 ITR 614, wherein, similar question was answered by us against the Revenue and in favour of the assessee. In view of the facts and circumstances and the proposition of law laid down by this Court in earlier decision, in absence of any material requiring departure from the earlier view, we are inclined to follow the same view. Since this reference is, squarely, covered by the earlier view, we do not deem it expedient, at this juncture, to divulge into meticulous factual aspects.

For the reasons enumerated in the earlier decision and the facts of the present case, we are of the view that on the facts and in the circumstances of the case, the Appellate Tribunal is correct in holding that the assessee company is not liable to tax under section 104 of the Act.

The reference is, thus, answered in the affirmative, in favour of the assessee and against the revenue. The reference shall stand disposed of accordingly without any order as to costs.

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(vjn)